IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8104 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RASIDABIBI WIFE OF SHAHBUDDIN CHANDBHAI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE ASST GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

#. Heard Ms.S.G.Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 7-6-1999 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad

against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- B interalia indicate that in all six prohibition cases were registered against the petitioner at Nashabandhi Station West police stations on 5-7-97, 10-7-97, 4-8-98, 15-11-98, 5-2-99 and 9-5-99 respectively. That the first four cases are pending for trial whereas the remaining two cases are pending further investigation. That in each case, the country made liquor was seized from the possession of the petitioner / detenu. Over and above, that two witnesses on assurance of their anonymity have given their statement vide dated 6-6-99 against the petitioner regarding the anti social activities of the petitioner. That on the basis of the said material, the respondent No. 2 - The Commissioner of Police, Ahmedabad the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing her prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the husband of the petitioner had sent a representation dated 1-10-99 to the Home Minister and other authorities and had requested for supply of documents like report of the Chemical Analyzer in respect to offence registered vide C.R. No : 38/99 and C.R. No : 146/99 and has also requested for statement of witnesses who were present at the time of raid. That despite the receipt of the said representation on 4-10-99, the respondents have failed to supply the documents claimed and though the specific contention has been raised in Para 7(A), no explanation is forthcoming and as such, the continued detention of the petitioner has become illegal on account of violation of Constitutional mandate under Article 22(5).

#. The detaining authority has filed affidavit dated 3rd January, 2000 in reply to the contentions raised in the petition. However, no explanation to amended Para 7(A) has been given in the said petition. The learned AGP

Mr.K.T.Dave on instructions from the original file has fairly stated at bar that as per the noting made therein, the State Government had instructed the detaining authority to supply the requisite documents to the detenu after receipt of the representation on 4-10-99. However, file of the detaining authority does not contain any indication as to whether such documents have been supplied or not.

#. On the basis of the above stated facts and circumstances, I am constrained to hold that the petitioner / detenu was deprived of her valuable right to make an effective representation by not supplying necessary documents claimed vide a representation dated 1-10-99. That the said act and action on the part of the detaining authority violated the constitutional mandate enshrined under Article 22(5) of the Constitution and hence,the continued detention of the petitioner is rendered illegal and as such, the impugned order is required to be quashed and set aside.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-6-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - RASIDABIBI WIFE OF SHAHBUDDIN CHANDBHAI is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 8-2-2000 [A.K.Trivedi, J.]

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